

REMARKS

By this amendment, claims 1-19, 22, 24-29 and 31-34 are pending, in which claims 20, 21, 23, 30 and 35 are canceled without prejudice or disclaimer, claims 1-19, 22, 24-29 and 31-34 are currently amended. No new matter is introduced.

The Office Action mailed May 16, 2011, **A)** rejected claims 21-23, 34 and 35 under 35 U.S.C. § 101; **B)** rejected claims 1, 2, 4-9, 12-23 and 32-35 under 35 U.S.C. § 102(b) as anticipated by *Traversat et al.* (US 2002/0143855); and **C)** rejected claims 3, 10, 11 and 24-31 under 35 U.S.C. § 103(a) as obvious based on *Traversat* in view of *Zhang* (US 2007/0113269). The rejections are traversed for at least the following reasons.

A. 35 U.S.C. § 101 of Claims 21-23, 34 and 35

The rejection of claims 21, 23 and 35 is moot because the claims are canceled. With respect to the rejection of claims 22 and 34 under 35 U.S.C. § 101, Applicants amend claims 22 and 34 to even further define statutory subject matter, as amended above. Specifically, claims 22 and 34 are now directed to a "non-transitory computer-readable storage medium."

Accordingly, withdrawal of the rejection is respectfully requested.

B. 35 U.S.C. § 102(b) of Claims 1, 2, 4-9, 12-23 and 32-35

The rejection of claims 20, 21, 23 and 35 is moot because these claims are canceled. With respect to the rejection of claims 1, 2, 4-9, 12-19, 22 and 32-34 under 35 U.S.C. § 102(b) as anticipated by *Traversat*, Applicants respectfully traverse the rejection for at least the following reasons.

Initially, Applicants stress the following requirements for a 35 U.S.C. § 102 rejection.

1) In order to anticipate a claim, all features or limitations of a claim must be disclosed in a single reference either explicitly or inherently. 35 U.S.C. § 102.

2) All positively recited features of a claim must be addressed in an Office Action. *In re Angstadt et al.*, 190 USPQ 214 (CCPA 1976); *In re Alul et al.*, 175 USPQ 700 (CCPA 1972); *General Electric Company v. United States*, 198 USPQ 65 (US Cl.Ct 1978).

3) When rejecting a claim based on prior art, the Examiner must designate the particular part of the reference relied on as nearly as practicable. 37 C.F.R. §1.104(c)(2).

In view of the above, *Traversat* does not disclose, "a quasi peer-to-peer data communication over a cellular communication network," as recited in independent claims 1 and 22, and, similarly, "quasi peer-to-peer connectivity in a cellular communication network," as recited in independent claims 9 and 34.

In discussing the rejection of claim 1, the Office Action did not address the positively recited feature of, "cellular communication networks" and did not designate the particular part of the reference relied on in disclosing "cellular communication networks." *See* Office Action, page 3. That is, and despite copying the claim language, the Office Action did not specifically address "cellular communication networks." In fact, *Traversat* does not disclose, or even suggest, that the system of *Traversat* can be practiced in a cellular communication environment. *See, e.g., Traversat*, paragraphs [0084], [0098], [0101], [0106], [0245], and [0379]. Further, the Office Action, at best, appears to suggest that *Traversat* does not disclose a cellular communication network at least because the Office Action acknowledges that *Traversat* does not disclose using a cellular communication interface. *See* Office Action, page 9 (discussing the rejection of claim 27).

Since the factual determination of lack of novelty under 35 U.S.C. § 102 requires the **identical disclosure** in a single reference of **each element** of a claim, such that the **identically**

disclosed subject matter is placed into the recognized possession of one having ordinary skill in the art, *Traversat* fails to anticipate the claimed subject matter. See, e.g., *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1308, (Fed. Cir. 2008); *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358 (Fed. Cir. 2003); *Trintec Indus., Inc. v. Top U.S.A. Corp.*, 295 F.3d 1292, 1296-97 (Fed. Cir. 2002) (noting that **the standard is strict, requiring exact correspondence** between the contents of the applied reference and the claimed elements, such that each and every element recited in the claims is present in the allegedly anticipatory reference); *Crown Operations Int'l, Ltd. v. Solutia Inc.*, 289 F.3d 1367 (Fed. Cir. 2002).

Because the Office Action fails to positively address all of the features recited in independent claims 1, 9, 22 and 34, and because the Office Action seemingly admits that *Traversat* does not anticipate all of the features of independent claims 1, 9, 22 and 34, the rejection under § 102 must be withdrawn.

In rejecting claim 27, the Office Action appears to have alleged that it would have been obvious to one of ordinary skill in the art to have modified *Traversat* to result in the claimed quasi peer-to-peer data communication over a cellular communication network. See Office Action, page 9 (discussing the modification of *Traversat* based on the disclosure of a cell phone as a peer). Although that reasoning was not presented with respect to independent claims 1, 9, 22 and 34, Applicants address that argument with respect to independent claims 1, 9, 22 and 34 to further advance prosecution to allowance.

Any alleged interpretation of *Traversat* supporting a cellular communication network as a network in which *Traversat's* system can be implemented is not enabled by *Traversat*. See M.P.E.P. § 2121. As discussed above, *Traversat* does not include a cellular communication network as an exemplary network in which the system of *Traversat* can be practiced. See, e.g., *Traversat*, paragraphs [0084], [0098], [0101], [0106], [0245], and [0379]. The mere fact that

Traversat discloses that a peer can be a cell phone does not actually enable the system of *Traversat* to be implemented on a cellular communication network. Importantly, *Traversat* does not acknowledge the difficulties in practicing quasi peer-to-peer connectivity in a cellular communication network as discussed in, for example, the current specification. *See, e.g.,* specification, pp. 1-2. Merely disclosing peer-to-peer connectivity related to a network in general and a cell phone as an exemplary peer still requires undue experimentation for one skilled in the pertinent art to make and use quasi peer-to-peer connectivity over a cellular communication network. Therefore, any allegation of implicit disclosure of a cellular communication network, or that modifying the system of *Traversat* to be implemented on a cellular communication network, is not enabled by *Traversat*. Thus, such an argument cannot support a rejection under § 102 or § 103.

Based on the foregoing, independent claims 1, 9, 22 and 34 are patentable over *Traversat*. Dependent claims 2, 4-8, 12-19, 32 and 33 also are patentable over *Traversat*, at least in view of the patentability of independent claims 1 and 9, from which they variously depend, as well as for the additional features these claims recite.

Accordingly, withdrawal of the rejection is respectfully requested.

C. 35 U.S.C. § 103(a) of Claims 3, 10, 11 and 24-31

The rejection of claim 30 is moot because the claim is canceled. With respect to the rejection of claims 3, 10, 11, 24-29 and 31 under 35 U.S.C. § 103(a) as obvious based on *Traversat* in view of *Zhang*, Applicants respectfully traverse the rejection for at least the following reasons.

Independent claim 24 recites, "a quasi peer-to-peer communication between mobile terminals in a cellular communication network," and independent claim 27 recites, "quasi peer-

to-peer connectivity in a cellular communication network." Applicants respectfully submit that independent claims 24 and 27 are patentable over *Traversat* for at least the same reasons that independent claims 1, 9, 22 and 34 are patentable over *Traversat*. Additionally, *Zhang* fails to overcome the deficiencies set forth above with respect to *Traversat*. Therefore, independent claims 24 and 27 are also patentable over *Traversat* in view of *Zhang*.

Dependent claims 3, 10, 11, 25, 26, 28, 29 and 31 also are patentable for at least the reasons independent claims 24 and 27 are patentable, from which the claims depend, as well as for the additional features the claims recite.

Accordingly, withdrawal of the rejection is respectfully requested.

Conclusion

Therefore, the present application, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9959 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

August 16, 2011
Date

/Lenwood Faulcon, Jr./
Lenwood Faulcon, Jr.
Attorney/Agent for Applicant(s)
Reg. No. 61310

Kevin R. Gualano
Attorney/Agent for Applicant(s)
Reg. No. 64888

918 Prince Street
Alexandria, VA 22314
Tel. (703) 519-9952
Fax (703) 519-9958